

GUERNSEY STATUTORY INSTRUMENT

2002 NO. 23

**The Data Protection (Subject Access) (Fees and
Miscellaneous Provisions) Regulations, 2002**

<i>Made</i>	<i>9th July, 2002</i>
<i>Coming into operation</i>	<i>1st August, 2002</i>
<i>Laid before the States</i>	<i>2002</i>

THE STATES ADVISORY AND FINANCE COMMITTEE, in exercise of the powers conferred on it by sections 7(2), (7), (8) and (12) (having regard to the definitions of “prescribed”, “the prescribed maximum” and “the prescribed period” in section 7(11)), 8(1) and 66(2) of the Data Protection (Bailiwick of Guernsey) Law, 2001^a and all other powers enabling it, and after consultation with the Data Protection Commissioner in accordance with section 66(3) of that Law, hereby makes the following Regulations -

Extent of subject access requests.

1. (1) A request for information under any provision of section 7(1)(a), (b) or (c) of the Law is to be treated as extending also to information under all other provisions of section 7(1)(a), (b) and (c).

(2) A request for information under any provision of section 7(1) of the Law is to be treated as extending to information under the provisions of section 7(1)(d) only where the request shows an express intention to that effect.

(3) A request for information under the provisions of section

^a Order in Council No. V of 2002.

7(1)(d) of the Law is to be treated as extending also to information under any other provision of section 7(1) only where the request shows an express intention to that effect.

Maximum subject access fee.

2. Except as otherwise provided by regulations 3 and 4, the maximum fee which may be required by a data controller under section 7(2)(b) of the Law is £10.

Limited requests for subject access where data controller is credit reference agency.

3. In any case in which a request under section 7 of the Law has been made to a data controller who is a credit reference agency, and has been limited, or by virtue of section 9(2) of the Law is taken to have been limited, to personal data relevant to an individual's financial standing -

- (a) the maximum fee which may be required by a data controller under section 7(2)(b) of the Law is £2, and
- (b) the prescribed period for the purposes of section 7(8) of the Law is seven business days.

Certain subject access requests in respect of health records - transitional provisions.

4. (1) This regulation applies only to cases in which a request made under section 7 of the Law -

- (a) relates wholly or partly to personal data forming part of a health record;
- (b) does not relate exclusively to data within paragraphs (a) and (b) of the definition of "data" in section 1(1) of the

Law; and

(c) is made before the end of the first transitional period.

(2) Where in a case to which this regulation applies, the obligation imposed by section 7(1)(c)(i) of the Law is to be complied with by supplying the data subject with a copy of information in permanent form, the maximum fee which may be required by a data controller under section 7(2)(b) of the Law is £50.

(3) Except in a case to which paragraph (2) above applies, a data controller may not require a fee under section 7(2)(b) of the Law where, in a case to which this regulation applies, the request relates solely to personal data which -

- (a) form part of a health record and at least some of which was made after the beginning of the period of 60 days immediately preceding the date of the request; and
- (b) do not fall within paragraph (a) or (b) of the definition of “**data**” in section 1(1) of the Law.

(4) For the purposes of paragraph (3) above, an individual making a request in any case to which this regulation applies may specify that his request is limited to personal data of the description set out in that paragraph.

Interpretation.

5. (1) In these Regulations, unless the context otherwise requires -

“**business day**” has the meaning given by section 1(1) of the Bills of

Exchange (Guernsey) Law, 1958^b;

“the first transitional period” has the same meaning given in paragraph 1(2) of Schedule 7 to the Law; and

“the Law” means the Data Protection (Bailiwick of Guernsey) Law, 2001.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^c apply to the interpretation of these Regulations -

(a) throughout the Bailiwick; and

(b) as they apply to the interpretation of an enactment.

(3) Unless the context otherwise requires, references in these Regulations to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

(4) Unless the context otherwise requires -

(a) a reference in these Regulations to a numbered regulation is a reference to the regulation of these Regulations which is so numbered; and

(b) a reference in a provision of these Regulations to a numbered paragraph is a reference to the paragraph of

^b Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; No. XIV of 1994 and No. IX of 2001.

^c Ordres en Conseil Vol. XIII, p. 355.

that provision which is so numbered.

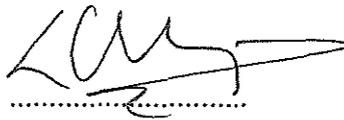
Citation.

6. These Regulations may be cited as the Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations, 2002.

Commencement.

7. These Regulations shall come into force on the 1st August, 2002.

Dated this 9th day of July, 2002.

A handwritten signature in black ink, appearing to read 'L. C. Morgan', written over a horizontal dotted line.

L. C. MORGAN

President of the States Advisory and Finance Committee

For and on behalf of the Committee.

EXPLANATORY NOTE.

(This note is not part of the Regulations)

These Regulations make miscellaneous provision in respect of the exercise of the right of access to personal data conferred in section 7 of the Data Protection (Bailiwick of Guernsey) Law 2001 ("the Law").

Regulation 1 provides that a request for access to information under any provision of section 7(1)(a) to (c) of the Law is to be treated as extending to all such information. But a request is not to be taken to extend to information about the logic of automated decision-taking under section 7(1)(d) unless an express intention appears, and where there is such an express intention, the request is to be treated as limited to that information unless an express contrary intention appears.

Regulation 2 provides that, except in the special cases set out in regulations 3 and 4, the maximum fee which a data controller may charge for access to data under section 7(2) of the Law is £10.

The Regulations make special provision as to fees and time limits in relation to two particular types of subject access request: -

In respect of limited requests as provided in section 9 of the Law, where the data controller is a credit reference agency and a subject access request is limited to personal data relevant to the applicant's financial standing, the maximum fee which may be charged by the data controller for access is prescribed as £2, and the period within which a data controller must comply with the request is prescribed as seven working days rather than the sixty day period which, by virtue of section 7(11) of the Law, otherwise applies (regulation 3).

In respect of subject access requests relating to records which are health records (as defined in section 67 of the Law), and which are not exclusively automated or intended for automation within the meaning of the first two paragraphs of the definition of "data" in section 1(1) of the Law, the Regulations make transitional provision in respect of certain requests made before the end of the first transitional period. Firstly, where a permanent copy of the information is to be provided, the maximum fee which may be charged by the data controller for access in the case of such requests is prescribed as £50. Secondly, where the request is restricted solely to data which form part of a health record, and that record has been at least partially created within the sixty days preceding the request, and no permanent copy of the information is to be provided, no fee may be charged; provision is made for requests to be specifically limited to conform to these circumstances (regulation 4).